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NANCY ERIKA SMITH, ESQ.

April 6, 2018

Hon. Deborah A. Batts, U.S.D.J.
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street, Room 2510
New York, New York 10007-1312

Re: ***Bernstein, et al. v. O'Reilly, et al.***
Civil Action No.: cv-17-9483

Dear Judge Batts,

I write in response to the correspondence filed yesterday by defendant Fox News. Plaintiffs object to defendant's request that the Court allow it to start over with new motions because plaintiffs filed a cross motion to amend the Complaint. It is not unusual for a cross motion to amend to be filed in response to a motion to dismiss on the pleadings and such cross motion certainly does not "moot" the pending motions.

There is no good reason for defendants to set the restart button and file completely new motions. In fact, defendant does not even assert one. Plaintiffs have responded in detail to the motions already filed. Defendant can certainly address the amended complaint in their Reply papers. We request that the Court hear the filed motions.

Finally, plaintiffs have repeatedly requested that counsel provide plaintiff Mackris and the Court with her complete Settlement Agreement including the portion incorporated and referred to at Paragraph 2. (Mullin Dec. **Ex. B**). We objected to counsel excluding this part of the Settlement Agreement from the *in camera* submission to the Court. (Mullin letter 3/28/18). Ms. Mackris does not have this document. Her prior lawyer has refused to provide it. It is part of the Agreement that Your Honor has already ruled is a judicial document. We again request that it be provided to us and the Court. It is relevant to our arguments in opposition to defendants' motions to dismiss.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nancy Erika Smith', with a long horizontal flourish extending to the right.

NANCY ERIKA SMITH

cc: Joseph M. Terry, Esq. (via e-mail)
Andrew N. Bourne, Esq. (via e-mail)
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